

# COLLECTIVE EXHIBIT 1

NEW ENGLAND COMPOUNDING PHARMACY, INC. PRODUCTS LIABILITY  
VIDEOTAPED DEPOSITION OF KENNETH R. LISTER, M.D. on 03/09/2015

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND  
COMPOUNDING PHARMACY,  
INC. PRODUCTS LIABILITY MDL No. 2419  
LITIGATION

Master Dkt:  
1:13-md-02419-RWZ

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THIS DOCUMENT RELATES  
TO:

All Actions

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VIDEOTAPED DEPOSITION OF  
KENNETH R. LISTER, M.D.

9:03 a.m.  
March 9, 2015

Suite 1100  
315 Deaderick Street  
Nashville, Tennessee

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1 A. Cumberland Medical Center.

2 Q. The building where Cumberland Medical  
3 Center operates today is the same building that  
4 Specialty Surgery Center operated out of?

5 A. Yes.

6 Q. Today, is there any signage in the building  
7 where Cumberland Medical Center operates that has your  
8 name on it?

9 A. No.

10 Q. Is there any signage outside of the  
11 building where Cumberland Medical Center operates that  
12 has your name on it?

13 A. No.

14 Q. At any time that you were affiliated with  
15 Specialty Surgery Center was there any sign outside or  
16 inside the Specialty Surgery Center building that had  
17 your name on it?

18 A. I don't recall.

19 Q. Who would know the answer to that?

20 A. Jean may know the answer to that.

21 Q. And that's Jean Atkinson?

22 A. Correct.

23 Q. Look at Exhibit 75C. Please tell the jury  
24 what that photograph is.

25 A. This is a view of the Specialty Surgery

1 the patients that you were sorry?

2 A. No.

3 Q. Do you own any portion of Cumberland  
4 Medical Center?

5 A. No.

6 Q. Did I get the name right? Is that the  
7 entity that bought the assets for Specialty Surgery  
8 Center?

9 A. Correct.

10 Q. Did Cumberland Medical Center keep the same  
11 employees that Specialty Surgery Center had?

12 A. Cumberland Medical Center initially kept  
13 the same employees for a period of time.

14 Q. Then what happened?

15 A. Many of those employees have moved to other  
16 positions.

17 Q. With other employers?

18 A. Various employers, yes.

19 Q. For how long did they keep the same or  
20 substantially the same workforce?

21 A. The workforce was kept at the hospital, not  
22 necessarily at Specialty Surgery Center, but I believe  
23 the agreement was for a period of several months.

24 Q. Did Cumberland Medical Center keep the same  
25 supervisors as Specialty Surgery Center?

1 A. I don't believe so.

2 Q. And what hospital were you talking about?  
3 You said the employees were kept at the hospital.

4 A. Cumberland Medical Center.

5 Q. So some of the Specialty Surgery Center  
6 employees were moved to the Cumberland Medical Center  
7 hospital?

8 A. Correct.

9 Q. Did the Cumberland Medical Center take  
10 possession of the medical equipment that was in  
11 Specialty Surgery Center?

12 A. Yes, it did.

13 Q. Does the Cumberland Medical Center perform  
14 epidural steroid injections at the Brown Avenue  
15 location?

16 A. No.

17 Q. Why not?

18 A. They chose to have me do my procedures at  
19 the hospital.

20 Q. So you still do epidural steroid  
21 injections, but instead of doing them at the Brown  
22 Avenue property, you do them at the Cumberland Medical  
23 Center hospital?

24 A. Correct.

25 Q. Do you know why that change occurred?

1 meningitis outbreak?

2 A. I don't believe so.

3 Q. So what was the intention of Specialty  
4 Surgery Center in terms of where the liability --  
5 potential liability would rest after the sale to  
6 Cumberland Medical Center for any lawsuits arising out  
7 of the outbreak?

8 A. I'm not sure exactly where your question is  
9 going.

10 Q. Okay. What was Specialty Surgery Center's  
11 intention at the time it was sold to Cumberland  
12 Medical Center about the liability for the  
13 potential -- potential liability from the lawsuits  
14 arising out of the fungal meningitis outbreak? Is  
15 that to remain with Specialty Surgery Center?

16 A. I don't believe that there was any intent  
17 to transfer the liability.

18 Q. What was the intention of Specialty Surgery  
19 Center when it was dissolved in 2014 with respect to  
20 the potential liability for any lawsuits arising out  
21 of the fungal meningitis outbreak?

22 A. Again, I'm not sure what you're asking.

23 Q. Okay. Specialty Surgery Center was  
24 dissolved in the end of 2014; right?

25 A. Correct.

1 Q. So Specialty Surgery Center organization no  
2 longer exists?

3 A. Correct.

4 Q. What was the intention of Specialty Surgery  
5 Center with respect to any liabilities it might have  
6 had at the time it was dissolved?

7 A. I don't think there was any intention  
8 planned. The sale to Cumberland Medical Center was  
9 planned well before these lawsuits were initiated.

10 Q. When Cum -- when Cumberland Medical Center  
11 bought Specialty Surgery Center's assets, did  
12 Cumberland pay money?

13 A. Cumberland did pay money, yes.

14 Q. What happened to the money?

15 A. It was divided among the partners.

16 Q. Was there any money left in Specialty  
17 Surgery Center when it was dissolved in the end of  
18 2014?

19 A. I don't believe there's any significant  
20 amount of money left there.

21 Q. Cumberland Medical Center purchased all of  
22 the assets of Specialty Surgery Center as part of that  
23 sale; is that right?

24 A. Correct.

25 Q. So all of the assets of Specialty Surgery

1 Center when they were purchased by Cumberland Medical  
2 Center were transferred to Cumberland Medical Center;  
3 is that right?

4 A. Correct.

5 Q. And money was paid from Cumberland Medical  
6 Center back to Specialty Surgery Center; right?

7 A. Correct.

8 Q. And that money was then divided among the  
9 partners of Specialty Surgery Center of which you are  
10 one.

11 A. Correct.

12 Q. And that money is now out of Specialty  
13 Surgery Center?

14 A. Correct.

15 Q. And before it was dissolved, Specialty  
16 Surgery Center no longer had any assets; is that  
17 right?

18 A. Correct.

19 Q. Did Cumberland Medical Center know at the  
20 time of the sale that there were potential liabilities  
21 on the part of Specialty Surgery Center in connection  
22 with the meningitis outbreak?

23 A. At the time the sale was completed, I  
24 believe Cumberland Medical Center was aware of  
25 potential liabilities.

1 Q. Did you have any role in discussions with  
2 Cumberland Medical Center about the sale at any time?

3 A. No.

4 Q. Who owns Cumberland Medical Center?

5 A. I don't know.

6 Q. Was any money -- any of the money that was  
7 paid from Cumberland Medical Center to Specialty  
8 Surgery Center paid to any of the 35 patients or the  
9 families who were sickened or died as a result of the  
10 fungal meningitis outbreak?

11 A. I do not believe so.

12 Q. Did Specialty Surgery Center ever pay any  
13 of the medical expenses for any of the patients who  
14 were sickened or who died as a result of the  
15 injections received at Specialty Surgery Center?

16 A. I don't believe so.

17 Q. Do you know how much money was paid from  
18 Cumberland Medical Center to Specialty Surgery Center  
19 in connection with the assets sale?

20 A. My recollection is that the purchase price  
21 was 2.4 million.

22 Q. Was that money distributed among the  
23 partners of Specialty Surgery Center in accordance  
24 with the percentage ownership of each of the partners?

25 A. Yes.

1           A.           This is not a document. This is several  
2 documents.

3           Q.           What do you mean by that?

4           A.           There are several separate specific  
5 documents associated with this exhibit.

6           Q.           Do you recognize that the first document in  
7 Exhibit 83 is the purchase agreement -- asset purchase  
8 agreement between Specialty Surgery Center, PLLC and  
9 Cumberland Medical Center, Inc.?

10          A.           It does appear to be the asset purchase  
11 agreement between Cumberland Medical Center and SSC.

12          Q.           And then exhibits and attachments to that  
13 document make up the remainder of Exhibit 83 or do you  
14 think there's some unrelated documents attached?

15          A.           They appear to be somewhat related. I  
16 have -- I would have to go into them in great detail  
17 to determine what they are.

18          Q.           Not necessary. So you recognize that at  
19 least the first document here is the 2013 agreement by  
20 which Specialty Surgery Center, PLLC conveyed all of  
21 its assets to Cumberland Medical Center in exchange  
22 for money?

23          A.           That is -- does appear what it is.

24          Q.           Okay. And if you look at Page 2 of the  
25 agreement, which has the Bates number SSC-01865, under

1 Section 1.1, assets transferred. Do you see that?

2 A. Correct.

3 Q. Okay. As part of this deal, Specialty  
4 Surgery Center sold its building to medical --  
5 Cumberland Medical Center?

6 A. Correct.

7 Q. Sold its tangible personal property, which  
8 is -- includes the furniture, fixtures, equipment,  
9 supplies, inventory and other tangible personal  
10 property that was owned by Specialty Surgery Center?

11 A. Correct.

12 Q. And that's detailed in an exhibit to this  
13 document as part of Exhibit 83; is that right?

14 A. Correct.

15 Q. And then as part of that deal, Specialty  
16 Surgery Center sold all the patient charts and records  
17 to Cumberland Medical Center?

18 A. I don't know whether they were sold or  
19 simply transferred.

20 Q. Is there a difference?

21 A. I don't know.

22 Q. I don't either. D, permits. If you  
23 look -- I'm still on that same page. Part of the  
24 assets transferred were the permits which were defined  
25 here as "The certificate of need and all other